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July 6, 2017

VIA EMAIL AND U.S. MAIL

Eric J. Wilson / wilson.ericj@epa.gov
Deputy Director for Enforcement and
Homeland Security
US Environmental Protection Agency
Region II
290 Broadway
New York, NY 10007

Re: *Diamond Alkali Superfund Site, Lower 8.3 Miles of Lower Passaic River, Essex and Hudson Counties, New Jersey*

Dear Mr. Wilson:

I write on behalf of my client, Croda, Inc., ("Croda") regarding the above-referenced matter and in response to your March 30, 2017 Notice regarding Next Steps Including Initial Cash Out Settlement ("March 30, 2017 Notice"). Croda, as successor to Hummel Lanolin Corporation ("HLC"), was identified as a potentially responsible party ("PRP") in connection with the Diamond Alkali Superfund Site, Lower 8.3 Miles of Lower Passaic River (the "Site") in a General Notice Letter dated June 8, 2006. Croda, along with nine other PRPs, previously submitted an application for *de minimis* settlement, where it provided a summary explanation of why it is eligible for *de minimis* settlement. (*See* March 10, 2015 Ltr. frm. D. Riesel to E. Schaaf, Ex. B). This letter is to provide additional information pertinent to Croda's continuing request for *de minimis* status in light of the March 30, 2017 Notice, and to provide Croda's input regarding the allocation process mentioned therein.

The March 30, 2017 Notice sets forth the EPA's anticipated next steps in connection with funding and implementing the planned remedy for the Site, including identifying "[p]arties that are responsible for the release or discharge of dioxins, furans, or polychlorinated biphenyls ("PCBs") into the Lower Passaic River" ("Dioxin/PCB Parties"), and retaining the services of a third party allocator to perform an allocation and determine whether additional cash out

settlements might be appropriate for parties not associated with the release of dioxins, furans or PCBs into the Lower Passaic River. (March 30, 2017 Notice at 2.)

As discussed below, Croda is not a Dioxin/PCB Party under EPA's definition (or any definition) and, therefore, should not be included in any group of Dioxin/PCB Parties. Moreover, as discussed in the March 10, 2015 letter and for the further reasons mentioned below, Croda requests *de minimis* status and a cash-out settlement.

Finally, regarding the allocation process, Croda submits that any such process should apply the Gore factors to apportionment, and, as a consequence, be based on the toxicity and amount of contaminants contributed by PRPs. The allocation process should not rely upon in any manner the prior (and confidential) interim allocation performed by the Cooperating Parties Group ("CPG") over a decade ago for two primary reasons. First, the CPG interim allocation was by its own terms not based upon an application of the Gore factors. Second, all parties to that interim allocation agreed it would be kept confidential. Croda believes that, given the confidentiality of the interim allocations and their irrelevance to the upcoming allocation process, the EPA cannot select an allocator that is aware of the prior interim allocations. To do otherwise might compromise the neutrality of such allocator and undermine the parties' perception of the fairness of the process.

CRODA IS NOT A DIOXIN/PCB PARTY

Croda and HLC are not responsible for the release or discharge of dioxins, furans, or PCBs into the Passaic River. Croda is not aware of any evidence that any dioxins, furans, or PCBs were ever released from the HLC facility into the river, nor is it aware of any allegation that such contaminants were released from the HLC facility. The Lower Passaic River Study Area PRP Data Extraction Form for Croda/HLC ("DEF") does not allege that HLC released any dioxins, furans or PCBs into the river, or otherwise associate HLC with these contaminants in any manner.

HLC operated a lanolin production facility located at 185 Foundry Street in Newark, NJ, from approximately the late 1950s to 1987. HLC was a wholly owned subsidiary of Croda, until its merger into Croda in 1989.[1]

The HLC facility produced lanolin and lanolin-based derivatives and blends. Lanolin is a wax derived from wool grease, and it is used primarily in cosmetics and health care products. In nature, wool grease protects sheep's skin from the environment. The lanolin derived from wool grease plays a similar role when applied to human skin.

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[1] HLC should not be confused with Hummel Chemical Company, which was a separate corporation unrelated to Croda and HLC. *See* March 23, 2006 Hummel Croton, Inc./Hummel Chemical Company PRP Data Extraction Form at 1 ("Hummel Lanolin is a separate concern not connected to Hummel Chemical."); 1989 NJDEP Site Inspection Report (FTA0000076) ("Two monitoring wells were sampled during the October 14, 1988, NJDEP SI. Monitoring Wells 1 and 2 are located on the former Hummel-Lanolin (not related to Hummel Chemical) property . . . .").

Lanolin is produced by refining wool grease through a series of washing, neutralizing, and bleaching operations. Wool grease and water were the primary raw materials used in HLC's lanolin production process. Other raw materials used in the process included benzoyl peroxide, citric acid, hydrogen peroxide, isopropyl alcohol, sodium chlorite, caustic soda, soda ash, sulfuric acid, and EDTA (to remove Ca2+).

The HLC lanolin production process does not use, create, or otherwise release, dioxin, furans, or PCBs. The facility was not utilized by HLC for any other purpose that would have released those contaminants into the river. Accordingly, Croda should not be included in any group of Dioxin/PCB parties.

HLC'S ALLEGED DISCHARGES ARE DE MINIMIS

Croda respectfully requests a *de minimis* cash out settlement because for each of the eight contaminants of concern ("COCs") identified in the Record of Decision, HLC either did not discharge it or the alleged levels of discharge are insubstantial.

The DEF alleges that HLC's effluent contained certain metal COCs and that certain soil samples contained additional COCs. With respect to Croda's effluent, there is ***no evidence*** that five of the eight COCs (dioxin/furans, PCBs, PAHs, dieldrin, DDT) were ever detected in HLC's effluent. With respect to the few metal COCs allegedly detected (mercury, copper, lead), the levels are *de minimis*. Indeed, the alleged levels are ***well below drinking water MCLGs for mercury and copper***.[2] For lead, the DEF cites a 1980 PVSC study as showing that lead was detected in the HLC effluent. But, the 1980 PVSC study itself confirms the *de minimis* nature of any such discharges because it shows that HLC was responsible for ***approximately one fifty thousandth of the lead contributed*** to the sewer by the industries surveyed.[3]

With respect to HLC's soil, the DEF alleges that certain heavy metals and pesticides were detected therein. But, subsequent to detecting low levels of contaminants in certain soil samples, an investigation was conducted by HLC and the NJDEP to determine the source. That investigation concluded that the soil contamination originated from an off-site source.[4] Therefore, these detections cannot be the basis for any liability on the part of HLC.

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[2] *Compare* DEF at 11, citing FMG000088 at Tab 3 (reporting 0.001 ppm mercury and 0.43 ppm copper) *with* EPA National Primary Drinking Water Regulations (MCGL for mercury of 0.002 ppm and MCGL for copper of 1.3 ppm).

[3] DEF at 11, citing FMG000088 at Tab 3 (PVSC study reporting HLC lead contributions as 0.070 lbs/day). The PVSC study reports total lead contributions of the industries surveyed as over 3,400 lbs/day (approximately 3,100 lbs/day of which was contributed by a single PRP). HLC's share is approximately 0.002% of total alleged lead contributions in the study.

[4] *See* Exhibit A (Feb. 2, 1989 Ltr. frm. Mr. Lux to Mr. Kehayes, NJDEP, re Hummel Lanolin):

> Hummel has performed a fairly extensive site investigation to determine whether contamination found near the site boundary was the result of onsite or offsite discharges. The underground fuel oil tank, floor drains, and effluent sampling

As a consequence, even assuming *arguendo* the allegations of the DEF, these allegations (and the documents upon which they are based) establish that Croda would be at most a *de minimis* party.

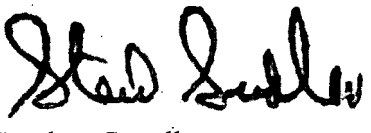
THE EPA SHOULD NOT SELECT AN ALLOCATOR WITH KNOWLEDGE OF THE CPG'S CONFIDENTIAL INTERIM ALLOCATIONS

Croda submits that the allocation process should accurately apply the Gore factors as well as agency guidance for *de minimis* settlement eligibility. Therefore, any such allocation process should not rely on or consider in any manner the confidential interim allocations assigned to CPG group members over a decade ago. Moreover, in order to protect the confidentiality of such allocations and to ensure that the allocation is carried out in a fair and unbiased manner, the EPA should retain an allocator without any knowledge of the interim allocations.

The interim allocation was performed in 2006. At that time, there was little-to-no party-specific information available regarding the amount or toxicity of each CPG member's alleged contributions to the LPRSA. Because of this lack of party-specific toxicity/volume data, the allocator implemented a crude methodology dictated not by the factors that govern apportionment of liability, but by the exigencies of the time and lack of available relevant information. Importantly, the interim allocations did not consider the Gore factors.

Thank you for your time and consideration. Croda looks forward to discussing the above points with the EPA further in the coming months.

Very truly yours,



Stephen Swedlow

cc: Juan Fajardo / fajardo.juan@epa.gov

06095-00001/9406587.1

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basin were all eliminated as sources. Therefore, the soil contamination appears to be the result of an offsite source. This Bureau supports the proposal for case closure.

Id. at 1; *see also* DEF, Tab 3 (1991 NJDEP PRP Investigation of Foundry Street Complex) at FMG000121 ("The sludge contamination was determined to originate from an off site source").

EXHIBIT A

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER RESOURCES
BUREAU OF GROUND WATER DISCHARGE CONTROL

RECEIVED
FEB 8 11 23 AM '89
INDUSTRIAL SITE EVALUATION ELEMENT
BEEC

MEMORANDUM

TO: Kehayes, Case Manager

THROUGH: Karen Fell, Section Chief
Bureau of Ground Water Discharge Control

FROM: Robert L. Lux, Geologist RLL
Bureau of Ground Water Discharge Control

SUBJECT: Hummel Lanoline
City of Newark, Essex Co.
ECRA #86732

DATE: FEB 02 1989

As requested, I have reviewed the Final Report which was received by this Bureau on December 22, 1988. I have the following comments.

Hummel has performed a fairly extensive site investigation to determine whether contamination found near the site boundary was the result of onsite or offsite discharges. The underground fuel oil tank, floor drains, and effluent sampling basin were all eliminated as sources. Therefore, the soil contamination appears to be the result of an offsite source.

This Bureau supports the proposal for case closure. There are no further requirements for Hummel at this time. However, I would like to make three recommendations.

-Contact the appropriate enforcement Bureau concerning the contamination found.

-Notify the local authorities of the possibility for a leak in the sewer line.

-Notify PVSC of the elevated levels of VOs and metals found in the sanitary sewer lines so that they may investigate the source of the discharge.

If you have any questions concerning this case, you may contact me at 2-0424.

GWQM177

c: Bureau Chief Ken Hart, BEECRA
Bureau Chief Steve Johnson, BGWDC
Mark Yannett, BEERA
File(KF)